

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

YOHAN WEBB,

Plaintiff,

vs.

BRAD JOHNSON, in his individual capacity; TYSON HELM, Correctional Officer, in his individual capacity; JOESPH WILSON, Correctional Officer, in his individual capacity; QUINTON HOUCHIN, Correctional Officer, in his individual capacity; and JOSHUA EATON, Correctional Officer, in his individual capacity;

Defendants.

4:21CV3042

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Notice of Appeal (filing 118) and a memorandum from the Clerk of the Court requesting a ruling as to Plaintiff's authorization to proceed in forma pauperis on appeal (filing 119). This is Plaintiff's third interlocutory appeal in this case. Plaintiff seeks to appeal from the court's April 11, 2022 Memorandum and Order (filing 101) denying him leave to proceed in forma pauperis ("IFP") on appeal because the appeal was not taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

Plaintiff's interlocutory appeal for which this court denied him leave to proceed IFP is currently pending on appeal in the Eighth Circuit Court of Appeals. Plaintiff has been ordered to either pay the appellate filing fee or file a motion to proceed IFP *in the Eighth Circuit Court of Appeals*. (Filing 107; *see also* Filing 116 (order to pay filing fee or file IFP motion with respect to Plaintiff's second interlocutory appeal). Plaintiff cannot appeal this court's denial of leave to proceed

IFP on appeal, and the court concludes Plaintiff's appeal is frivolous. Rather than filing another appeal, Plaintiff should seek permission to proceed IFP directly in the Eighth Circuit Court of Appeals. *See* Fed. R. App. P. 24(a)(5) ("A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice [of the district court's denial].").

Because Plaintiff is attempting to appeal from an order that is not appealable, the court certifies that the appeal is not taken in good faith.

IT IS THEREFORE ORDERED that Plaintiff may not proceed on appeal in forma pauperis.

Dated this 19th day of April, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge